

1979 WL 42733 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 3, 1979

***1 RE: Jurisdiction of Municipal Recorder for the City of Greenville to impose sentence without an alternative of fine or imprisonment.**

Mr. Neal Forney
Assistant Director
South Carolina Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear Mr. Forney:

In a letter to this Office, you asked:

Is the municipal recorder of the City of Greenville required to impose a sentence in the alternative?

As you are aware, Judge Nessler, the Municipal Judge for Greenville, has also written in reference to the question. He specifically asked:

Does [Section 5-7-30 of the 1976 Code](#) of Laws permit municipalities to fix fines or penalties for violations of municipal ordinances at up to two hundred dollars or thirty days imprisonment?

It appears that he is also questioning whether that portion of [Section 5-7-30 of the 1976 Code](#) of Laws, as amended, which states: '(t)he municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding two hundred dollars or imprisonment not exceeding thirty days'

Allows the municipal recorder to impose a sentence without the alternative of a fine or imprisonment.

As to the question raised specifically by Judge Nessler, based upon a review of [Section 5-7-30](#), *supra*, municipalities may fix fines and penalties for the violation of municipal ordinances not exceeding two hundred dollars or imprisonment not exceeding thirty days. As to the question concerning the requirement of a sentence in the alternative, an earlier opinion of this Office, 1969 Op. Att'y. Gen. No. 2634, p. 39, a copy of which is enclosed, indicated that 'a municipal recorder does not have authority to impose a sentence singly; and must, therefore, impose a sentence in the alternative.'

This opinion was reached based upon a review of those sections now codified as [Sections 14-25-970, 14-25-10, and 14-25-50 of the 1976 Code](#) of Laws. (See also 1973 Op. Att'y. Gen. No. 3547, p. 184.) It is still the opinion of this Office that a municipal recorder must sentence in the alternative and that the portion of [Section 5-7-30](#), *supra* previously referenced may not be construed to limit this requirement. Instead, such may be considered as the limit provided for fixing fines and penalties by a municipality for the violation of municipal ordinances.

Sincerely yours,

Charles H. Richardson

Assistant Attorney General

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